FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.
CRIMINAL APPLICATION NO. 1261 OF 2005.
IN
CRIMINAL APPEAL NO. 179 OF 2005.

Shantaram Bhagwan Hire ..Applicant.
vs.
TheState of Maharashtra & anr. ..Respondents.

Office Notes,Office Memoranda of Coram, appearnaces,Courts's orders or directions and Registrar's orders.	:	Court's or Judge's orders

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Smt. Varsha Palav for the applicant.
Shri A.S. Shitole, A.P.P. for the State.

CORAM: V.M.KANADE,J.
DATED: 11-3-2005.

P.C.:

1. Heard learned Counsel appearing for the aplicant and the learned A.P.P. for the State.

2. The applicant is convicted by the trial Court for having committed an offence punishable under sections 363, 366 and 376 of the Indian Penal Code. The prosecution case is that the applicant had sexual intercourse with Suvarna, who was a minor girl below 16 years of age, during the period when they were together.

3. It is submitted that from the medical evidence, it can be seen that there is no injury on the person of the prosecutrix. It was further submitted

that so far as age of the prosecutrix is concerned, the prosecutrix has examined the Headmistress of the school, in which she has stated that she was not aware as to the basis on which her birth date was produced by the parents of the prosecutrix. The doctor has opined that age of the prosecutrix was between 16 years and 18 years. Learned Counsel for the applicant, therefore, submits that the applicant is entitled to be released on bail.

4. learned A.P.P.for the State has opposed the submissions made by the learned Counsel for the applicant. He submits that from the evidence of the Headmistress and the medical evidence it has been established that the prosecutrix was below 16 years of age. As such, the prosecution has established its case without reasonable doubt.

5. There cannot be any doubt that prima facie, it appears that the prosecutrix had lived with the applicant on her own. The only question is whether prosecutrix was minor or major at that time. There is some doubt regarding her actual age of the prosecutrix. It is submitted that the

original birth certificate was not produced by the parents of the girl. The ossification test also shows that the girl is of 16 to 18 years of age. In these circumstances, in my view, this is as fit case for grant of bail.

6. Accordingly, applicant be released on bail in the sum of RS.5,000/- with one or two sureties in the like amount.